

AGREEMENT

US EPA RECORDS CENTER REGION 5



470279

287 THIS AGREEMENT entered into, in duplicate, on this day of June, A. D. 1950, by and between FROST CO., a corporation organized under the laws of the State of Wisconsin, party of the first part, and H. G. KOENIG, of Twin Lakes, Wisconsin, party of the second part,

W I T N E S S E T H:

That in consideration of the mutual covenants and agreements herein contained, and One Dollar (\$1.00) each to the other paid by the parties, it is agreed by and between said parties, as follows:

WHEREAS, the party of the second part has originated and designed a useful article known as a three way elbow and bent tube connection to be used in place of conventional tee and tailpiece outlet, which makes a C. W. & O. variably usable for repair work by allowing a variable outlet, thereby missing joists on repair work; and the party of the first part is willing to manufacture and market the same under its own name in the usual course of its plumbing supply business, to wholesale jobbers and manufacturers:

1. Party of the first part agrees to manufacture and market a limited and reasonable number of said useful article for the purpose of ascertaining the desire of the trade to stock and use the same. Party of the first part shall be the sole judge as to the number to be manufactured under the term "limited and reasonable." Party of the first part, however, shall not take such device for the purpose of "killing" the same to the end that the same shall never be sold or issued to the trade, all subject, however, to the provisions of paragraph 10 hereof.

2. Party of the first part will pay to the party of the second part, on any number of said article so manufactured and sold by it, up to a quantity but not exceeding six thousand (6,000), a royalty of Twelve Cents (12¢) per article. On any article sold and manufactured over and above a quantity of six thousand (6,000), the party of the first part shall pay a royalty of Five Cents (5¢) per article manufactured and sold.

3. Party of the first part shall have the exclusive right to manufacture, sell and distribute said article in the United States or any foreign country during the pendency of patent application and at all times thereafter during the entire life of the letters patent, which may be issued in respect thereto as is hereinafter set forth. Said party of the first part shall likewise be authorized to grant to other manufacturers the right to manufacture, produce and sell, in which event the royalty basis shall at no time be more than Five Cents (5¢) per article or such reduced amount (applicable only to other manufacturers) as the parties may agree upon after negotiation.

4. Party of the first part shall keep an accurate record of the number of quantity of said article manufactured

and sold by it and shall make payment to the party of the second part monthly on the 25<sup>th</sup> day of each month for the number of items so manufactured and sold by it during the preceding month on the royalty basis aforementioned. The first royalty payment shall be made on the 25<sup>th</sup> day of October or earlier, A. D. 1950.

5. In the event a patent is secured by the party of the second part, it will not alter, change or affect in any way this agreement except that the party of the second part shall immediately on the securing of said patent, assign all rights of manufacture, sale and distribution under such patent or patents or any improvements thereon to the party of the first part, under terms and conditions of royalty as are outlined in this agreement.

6. Party of the second part believes that he has a patentable device and has applied for patent thereon. In the event of any claim of infringement of any other party, party of the second part shall in all respects cooperate with the party of the first part in the matter of the defense of such infringement, but he shall not be required to pay any costs, attorney's fees or damages in respect thereto. In the event of such claim for infringement party of the first part may withhold further payment of royalties until a decision in respect to such infringement, and upon a decision favorable to the parties hereto shall immediately pay any amounts so accrued. Party of the first part may at its own discretion decide whether in fact it desires to contest such claim of infringement, and shall not be duty-bound to contest the same. In the event of its decision not to so contest, party of the second part shall at all times be privileged, however, so to do.

Party of the second part will at all times warrant to the first party his title in and to said patent.

7. In the event no patent is secured by the party of the second part, said party of the first part shall not be prejudiced by this agreement but may, at its option, declare the same null and void and continue the manufacture, market and sale of said item without royalty. In such event, however, party of the second part shall not be under any other obligation to return royalty already paid.

8. Party of the first part shall not be under any obligation to manufacture and sell any minimum number of articles during any one year but shall use its best reasonable efforts toward the sale of said item through its usual channels.

9. This agreement shall remain in full force and effect until such time as patent is issued and thereafter under the same terms and conditions during the life of such patent. If no patent be issued, then party of the first part may terminate as aforementioned.

10. Party of the first part shall be privileged, under all terms and conditions hereof, after the first manufacture of

a "limited and reasonable number" of said useful article, to continue to manufacture and sell exclusively under all terms and conditions hereof. It may, at its option, however, elect not to so continue to manufacture and sell and shall in such event notify the party of the second part and release him from the terms and conditions of this contract. In the event the party of the first part shall determine not to so continue to manufacture and sell and no patent is at any time issued, it shall at all times be protected by paragraph 7 herein.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this 28<sup>th</sup> day of June, A. D. 1950.

FROST CO.

By M. C. Frost (SEAL)  
President

In presence of:

R. E. Russell

B. J. Hughes (SEAL)  
Secretary

Mrs. Marion Russell

H. G. Koenig (SEAL)

The undersigned, H. G. KOENIG, does hereby assign any and all rights and benefits of the within contract to H. G. KOENIG (aforementioned) and MARGARET E. KOENIG, his wife, as joint tenants, or the survivor of either, and not as tenants in common.

Dated this 28<sup>th</sup> day of June, A. D. 1950.

H. G. Koenig

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FROST CO., a corporation,  
Party of the First Part,

H. G. KOENIG,  
Party of the Second Part.